

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 349 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE M.C.PATEL Sd/-

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution

of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO
Nos.1 and 2 Yes.Nos. 3 to 5 No.

COMMISSIONER OF INCOME-TAX

Versus

M J WOOLENS PVT LTD

Appearance:

MR MANISH R BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE M.C.PATEL

Date of decision: 13/08/1999

ORAL JUDGEMENT

(Per :B.C.Patel,J)

The Tribunal has referred the following question
for the opinion of this Court :

"Whether, on the facts and in the circumstances
of the case the Tribunal was right in law in
coming to the conclusion that for the purpose of
computing relief under section 80J of the

Income-tax Act,1961, the amount of subsidy received by the assessee should not be excluded from the cost of depreciable assets ?"

In the case of Commissioner of Income-tax Vs. Grace Papers Industries Private Limited and others, reported in ITR 183 Pg. 591, it was held that the amount of subsidy received by the assessee should be taken into consideration while deciding the depreciation from the cost of assets.

Considering the scheme of various provisions of the Act and particularly Section 80J of the Income-tax Act, the Court pointed out relevancy of actual cost as indicated in Section 43(1). Since, the subsidy granted is not to meet the cost of the assets, the question of reducing the actual cost of the assets of the assessee, to the extent of subsidy received by the assessee, for the purpose of working out capital employed, does not arise. The Court pointed out in other words that the assesses are entitled to the relief under section 80J of the Act, without deduction of the cost to the extent of the subsidy. Mr.Bhatt has fairly stated that this has been approved by the Apex Court in case of Commissioner of Income-tax Vs. P.J.Chemicals Ltd. reported in 210 ITR 831.

In the result, the answer is in positive against the revenue and in favour of the assessee. No orer as to cost.

m.m.bhatt